

**ARB-108-2020****-1-****111-1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****ARB-108-2020****Date of decision:-11.11.2024**

M/s Rise Projects Private Limited

...Petitioner

Versus

Municipal Corporation, Faridabad

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate and
Mr. A.S. Rawaley, Advocate
for the petitioner.

Mr.Samarth Sagar, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) for appointment of an independent sole arbitrator to adjudicate the dispute between the parties.

2. Learned Senior counsel for the petitioner submits that vide allotment letter dated 12.04.2013, Annexure P3, petitioner was allotted a Group Housing plot in Sector 41, Faridabad and Clause 16 thereof provided that all disputes and differences between the parties shall be referred to the sole arbitration of the Commissioner, Municipal Corporation, Faridabad (MCF). He submits that the petitioner was issued

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a possession certificate on 10.05.2013, Annexure P4. He asserts that the respondent failed to fulfil its obligation under the allotment letter and did not complete the infrastructure and development work, but kept on demanding payment of installments. He submits that vide notice dated 20.12.2019, petitioner invoked the arbitration clause, but before the petitioner could approach this Court, by memo dated 12.05.2020, Annexure P6, respondent demanded a payment of Rs.32,65,27,571/-. Counsel submits that the petitioner has filed a petition under Section 9 of the Arbitration Act and by order dated 09.10.2020, learned ADJ, Faridabad restrained the respondent from resuming the plot, forfeiting the amount paid and from taking any coercive action till the disposal of the instant petition. He submits that this order is subject matter of challenge in connected FAO-13-2021. Asserting that in view of Section 12 (5) of the Arbitration Act, the Commissioner, MCF cannot be appointed as an Arbitrator, learned Senior counsel has requested for the appointment of an independent and impartial arbitrator.

3. Upon notice by this Court, the petition has been contested by filing a reply, wherein it has been submitted that the petitioner has breached the terms and conditions of the allotment letter and has defaulted in deposit of the installments as per the schedule given in the allotment letter. It has been submitted that the payment of the installments does not depend upon the completion of the development work, and on failure of the petitioner to make the timely payment, it is liable to pay interest. During the pendency of the petition, respondent filed miscellaneous applications bringing on record some additional



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documents.

4. Counsel for the respondent has raised two-fold submissions. It has been firstly argued that before approaching this Court by way of present petition, petitioner had filed a complaint, Annexure P-7, before the Real Estate Regulatory Authority (RERA) on 08.03.2020, which was partly accepted vide order dated 24.11.2022, Annexure R9. He submits that both the parties are in appeal against the said judgment. An argument has been raised by him that the petitioner had two remedies and having chosen to avail the remedy under Real Estate (Regulation and Development) Act, 1996 (for short “the RERA Act”), he was debarred from invoking Section 11 of the Arbitration Act. Second argument raised by counsel for the respondent is that once the RERA had adjudicated upon the matter, the findings recorded by it are binding upon the petitioner and the present petition is barred by the doctrine of *res judicata*. He has placed reliance upon *Indiabulls Housing Finance Limited Versus Deccan Chronicle Holdings Limited and others (2018) 14 SCC 783*, *Priyanka Taksh Sood and others Versus Sunworld Residency Pvt. Ltd. and another, 2022 SCC OnLine Del. 4717* and *Pallab Ghosh and another Versus Simplex Infrastructures Limited, 2024 SCC OnLine Gau 751* in support of his arguments.

5. The first question to be adjudicated is whether the petitioner had two alternative remedies, one under the RERA Act and the second under the Arbitration Act and having chosen to avail the remedy under the RERA Act, whether it was debarred from filing the present petition. In order to determine this question, it is necessary to examine the relief



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sought by the petitioner before RERA. In the complaint before RERA, petitioner sought the following relief:

“(i) To direct the Respondent-Corporation to get the Group Housing Scheme, Sector 41, Faridabad registered under the Provisions of the Real Estate (Regulation and Development) Act, 2016; and

(ii) To direct the Respondent – Corporation to fulfill its obligations as required to be carried out, in a time bound manner; and/or

(iii) Any other order that this Ld. Authority may deem fit.”

6. Some additional reliefs were also sought, which are discernible from the RERA’s order, Annexure R9,

“I. MCF should be directed to be register their project as a promoter under the provisions of the RERA Act.

“II MCF should be asked to complete entire infrastructural work and

III That MCF shall pay interest from 2014 @ SBI MCLR on account of amount deposited as delay penalty to the complainant till the date of possession.

IV MCG shall pay penalty due till date within 60 days of passing of the order by the Ld. Authority.

V Any other order or direction that this Ld. Authority may deem fit and appropriate in the case.”

7. The dispute in the present petition has emanated from a notice dated 03.12.2019, Annexure P5, served by the respondent upon the petitioner whereby the respondent demanded payment of the first, second and third installments, which according to the respondent became



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payable on 15.08.2018, 15.02.2019 and 15.08.2019. By this letter petitioner was called upon to deposit the amount within a period of 15 days, failing which, it was informed that further action would be taken as per the terms and conditions of the allotment letter. While sending a reply to this letter, petitioner by notice, which is a part of Annexure P5, invoked the arbitration clause.

8. When both the above reliefs are examined jointly, it is apparent that both the disputes are entirely different. The petitioner had approached RERA for directing the respondent to register the petitioner as a promoter under the RERA Act, besides seeking a direction to the respondent to complete the infrastructure work and to pay interest on the amount deposited as penalty, etc. The dispute whereby appointment of an arbitration has been sought is on account of the demand of the installments by the respondent. It therefore cannot be said that the disputes before both the authorities are the same and having chosen one remedy, the petitioner is debarred from invoking Section 11 of the Arbitration Act. The first arguments raised by the counsel for the respondent is, therefore, rejected.

9. Insofar as the second argument raised by the counsel for the respondent is concerned, it will suffice to notice that the legal issue has been answered by the Supreme Court in **Indian Oil Corp. Ltd. Versus M/s SPS Engineering Ltd., 2011 (3) RCR (Civil) 335**. The observations of the Supreme Court are reproduced hereunder:

“13. The question whether a claim is barred by res judicata, does not arise for consideration in a proceedings under Section



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11 of the Act. Such an issue will have to be examined by the arbitral tribunal. A decision on res judicata requires consideration of the pleadings as also the claims/issues/points and the award in the first round of arbitration, in juxtaposition with the pleadings and the issues/points/claims in the second arbitration. The limited scope of Section 11 of the Act does not permit such examination of the maintainability or tenability of a claim either on facts or in law. It is for the arbitral tribunal to examine and decide whether the claim was barred by res judicata. There can be no threshold consideration and rejection of a claim on the ground of res judicata, while considering an application under Section 11 of the Act.”

10. In **Parsvnath Developers Limited & Anr. Versus Rail Land Development Authority, 2020 (3) ArbiLR 536**, High Court of Delhi has observed that the issue of *res judicata* or estoppel or claims being barred under the principles of Order 2, Rule 2, CPC touch upon the merits of the claim and can be decided only by the Arbitral Tribunal. The power under Section 11 (6) of the Arbitration Act is only restricted to examining the existence of the arbitration clause and the objection raised by the respondent requiring the High Court to examine whether the disputes sought to be raised are overlapping with the claims raised before other fora cannot be sustained. Issues clearly fall within the domain of the Arbitral Tribunal and would be decided if and when raised by the respondent. Reliance is also been placed upon a recent decision by the Supreme Court in **SBI General Insurance Company Limited Versus Krish Spinning 2024 (3) RCR (Civil) 497** wherein it has been observed that Arbitral Tribunal is the first preferred authority to look



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into the questions of arbitrability and jurisdiction, and the referral Court should not venture into contested questions involving complex facts. As a result, the second argument raised by the counsel for the respondent is also rejected.

11. For the foregoing reasons, prayer made in the petition is accepted. Hon'ble Ms. Justice (Retd.) Jaishree Thakur, a former Judge of this Court, resident of House No. 36, Sector 8-A, Chandigarh, M: 98141 25236 is nominated to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements.

12. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed and communicated by the learned Arbitrator at her convenience.

13. Parties will be at liberty to raise all the pleas/defences before the Arbitrator.

14. Needless to mention that all the questions arising between the parties in this matter will remain open for determination in the arbitration proceedings, and any observation made hereinabove will not be binding on the learned Arbitrator.

15. A request letter be sent to Hon'ble Ms. Justice (Retd.) Jaishree Thakur alongwith a copy of this order.

(SUVIR SEHGAL)
JUDGE

11.11.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No